

**Unofficial Draft Copy**

As of: July 24, 2018 (8:45am)

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\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act generally revising laws related to budgeting and accounting by local government entities; requiring the attorney general to perform investigations and bring actions against local government entities under certain circumstances; revising the duties of the department of administration and auditors with respect to audits; requiring special audits under certain circumstances; requiring notification of city or county attorney if a shortage is found by an independent auditor; providing audit timelines; requiring the stoppage of state financial assistance to local government entities under certain circumstances; providing a taxpayer with an independent cause of action against a local government; allowing a receiver to be appointed under certain circumstances; allowing the department of administration to compel action by a local government under certain circumstances; imposing mandatory duties on certain local government and state officers, providing penalties; amending sections 2-7-503, 2-7-506, 2-7-508, 2-7-511, 2-7-515, 2-7-517, and 7-6-611, MCA; and providing an immediate effective date and an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION.    **Section 1. Failure to promptly perform duties**

**-- investigation -- remedy.** (1) Upon notice by any person of an alleged failure or refusal of a local government entity or its officers to promptly perform their duties under this part, the attorney general shall investigate the allegation. If the attorney general determines that there is sufficient evidence of substantial or habitual violations of the requirements this part, the attorney general shall bring an action in the district court in the county where the local government entity is located to compel compliance with the provisions of this part.

(2) In addition to any other penalty provided by law, the court may grant relief that it considers appropriate, including but not limited to providing declaratory relief, appointing a receiver for the local government entity, or compelling any mandatory duty required under this part imposed on a state or local government officer or local government entity.

(3) In any action brought under this section, the court shall award costs and reasonable attorney fees to the attorney general.

(4) In addition to the remedy provided by this section, the attorney general may pursue any other civil action or criminal proceeding against the local government or its officers allowed by law.

**Section 2.** Section 2-7-503, MCA, is amended to read:

**"2-7-503. Financial reports and audits of local government entities.** (1) (a) The governing body or managing or executive officer of a local government entity, other than a school

district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed and submitted to the department for review within 6 months of the end of the reporting period.

(b) The financial report of a local government that has authorized the use of tax increment financing pursuant to 7-15-4282 must include a report of the financial activities related to the tax increment financing provision.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report that is in excess of \$500,000 and that is also in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to

the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) ~~In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part.~~ When the audits, financial reports, and financial reviews required by this section are not timely conducted and filed, the department shall conduct or contract for a special audit or review of the affairs of any local government

entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits timely performed and filed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the state treasurer and must be deposited in the enterprise fund to the credit of the department.

(7) Failure to comply with the provisions of this section subjects the local government entity to the penalties provided in 2-7-517."

{*Internal References to 2-7-503:*

2-7-506a	2-7-514x	2-7-514x	2-7-514x
2-7-514x	2-7-517a	2-7-517a	2-7-517a
2-7-517a	2-7-517a	2-7-517a	7-6-611a
7-6-611a	15-1-121x	19-18-205x	20-9-203x
20-9-213x	20-9-235x	85-7-1616x	85-7-1913x}

**Section 3.** Section 2-7-506, MCA, is amended to read:

**"2-7-506. Audit by independent auditor.** (1) The department ~~may~~ shall prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, in consultation with the board, shall adopt rules governing the:

- (a) criteria for the selection of the independent auditor;
- (b) procedures and qualifications for placing applicants on

the roster;

(c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and

(d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract, and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within ~~90~~ 60 days of receipt of the audit notice, the department ~~may~~ shall designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department within 60 days of written notice by the department to the local government entity of the costs incurred in arranging the audit. The costs must be paid in the manner of other claims against the local government entity."

{Internal References to 2-7-506: None.}

**Section 4.** Section 2-7-508, MCA, is amended to read:

**"2-7-508. Power to examine books and papers.** The independent auditor ~~may~~ shall examine ~~any~~ all books, papers, accounts, and documents in the office or possession of any local government entity necessary to conduct a full, complete, and fair audit in accordance with the governing standards set forth in this part."

{Internal References to 2-7-508: None.}

**Section 5.** Section 2-7-511, MCA, is amended to read:

**"2-7-511. Access to public accounts -- suspension of officer in case of discrepancy.** (1) The independent auditor ~~may~~ shall count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.

(2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer's accounts to cash, bank accounts, or any of the papers, vouchers, or records of that office or if the independent auditor finds a shortage of cash, the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the local government entity.

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(3) Upon filing of the statement, the ~~officer~~ governing body of the local government entity shall after notice and the opportunity for a hearing, ~~be suspended~~ suspend the officer from the duties and emoluments of office and the governing body of the local government entity shall appoint a qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the following entities of the shortage:

(a) the governing body of the local government entity of the shortage; and

(b) the respective county, city, or town attorney.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit must be referred to the county attorney."

{Internal References to 2-7-511: None.}

**Section 6.** Section 2-7-515, MCA, is amended to read:

**"2-7-515. Actions by governing bodies.** (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in



the audit report, notification is not required.

(2) Notification to the department ~~shall~~ must include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) ~~The~~ Within 60 days of the receipt of the audit, the local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The department shall notify the entity of the acceptance of the corrective measures. If the department and the local government entity fail to agree, a conference between the parties must be held within 180 days of the department's decision not to accept the local government entity's corrective measures. Failure to resolve findings or implement corrective measures ~~shall~~ must result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

(4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department

within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department ~~may~~ shall refer the case to the attorney general. ~~to~~ The attorney general shall prosecute the case at the expense of the local government entity."

{Internal References to 2-7-515:  
2-7-521x 2-7-522x}

**Section 7.** Section 2-7-517, MCA, is amended to read:

**"2-7-517. Penalties -- rules to establish fine -- remedies.**

(1) ~~Except as provided in 15-1-121(12)(b), when~~ When a local government entity has failed to file a report as required by 2-7-503(1) or to make the payment required by 2-7-514(2) within 60 days, the department ~~may~~ shall issue an order stopping payment of any state financial assistance to the local government entity ~~or~~ and may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) In addition to the penalty provided in subsection (1), if a local government entity has not filed the audits or reports pursuant to 2-7-503 within 180 days of the dates required by 2-7-503, the department shall notify the entity of the fine due to the department and shall provide public notice of the delinquent audits or reports.

(3) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill

for an audit, the department ~~may~~ shall issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

(4) The department may grant an extension to a local government entity for filing the audits and reports required under 2-7-503 or may waive the fines, fees, and other penalties imposed in this section if the local government entity ~~shows good cause for the delinquency or~~ demonstrates that the failure to comply with 2-7-503 was the result of circumstances beyond the entity's control.

(5) The department shall adopt rules establishing a fine, not to exceed \$100, based on the cost of providing public notice under subsection (2), for failure to file audits or reports required by 2-7-503 in the timeframes required under that section.

(6) A taxpayer aggrieved by the failure of a local government entity to comply with its audit and reporting duties has an independent cause of action against the local government entity for failure to comply with the requirements of this chapter. The taxpayer shall bring the action in the district court in the county where the local government entity is located. In addition to any other penalty provided by law, the court may grant relief that it considers appropriate, including but not limited to providing declaratory relief, appointing a receiver for the local government entity, or compelling any mandatory duty

required under this chapter imposed on a state or local government officer or local government entity. If a taxpayer prevails in an action brought under this subsection, the taxpayer must be awarded costs and reasonable attorney fees."

{*Internal References to 2-7-517:*  
2-7-503x 15-1-121x}

**Section 8.** Section 7-6-611, MCA, is amended to read:

**"7-6-611. Role of department of administration.** (1) The department of administration shall prescribe for all local governments:

(a) general methods and details of accounting in accordance with generally accepted accounting principles as provided in 2-7-504;

(b) uniform internal and interim reporting systems as part of the uniform reporting systems provided for in 2-7-503;

(c) the form of the annual financial report as provided in 2-7-503; and

(d) general methods and details of accounting for the annual financial report as provided in 2-7-513.

(2) Local governments shall file with the department of administration:

(a) an annual financial report within 6 months of the fiscal yearend; and

(b) an audit report within 12 months of the end of the audited period.

(3) The governing body of each county or municipality shall

notify the department of administration in writing, on a form prescribed by the department of administration, of the creation, dissolution, combination, or other legal alteration of any special purpose district within the county or municipality.

(4) Each special purpose district shall obtain a permanent mailing address and notify the department of administration of the address and of any subsequent changes of the district's address.

(5) To compel a local government or a local government officer to perform a mandatory duty under this chapter, the department of administration may institute an action in the district court of the first judicial district. The court may grant declaratory relief or compel any mandatory duty required under this chapter. The court may award the department of administration damages, costs, and reasonable attorney fees."

{Internal References to 7-6-611:  
7-6-612x 15-1-121x}

NEW SECTION. **Section 9. Remedies.** A taxpayer aggrieved by the failure of a local government to comply with the budgeting and reporting duties prescribed by this chapter has an independent cause of action against the local government. The taxpayer shall bring the action in the district court in the county where the local government is located. In addition to any other penalty provided by law, the court may grant relief that it considers appropriate, including but not limited to providing declaratory relief, appointing a receiver for the local

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government, or compelling any mandatory duty required under this chapter imposed on a local government or its officers. If a taxpayer prevails in an action brought under this section, the taxpayer must be awarded costs and reasonable attorney fees.

## NEW SECTION.    **Section 10.    {standard} Codification**

**instruction.** (1) [Section 1] is intended to be codified as an integral part of Title 2, chapter 7, part 5, and the provisions of Title 2, chapter 7, part 5, apply to [section 1].

(2) [Section 9] is intended to be codified as an integral part of Title 7, chapter 6, part 40, and the provisions of Title 7, chapter 6, part 40, apply to [section 8].

NEW SECTION.    **Section 11.    {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION.    **Section 12.    {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION.    **Section 13.    {standard} Applicability.** [This act] applies to applies to actions occurring on or after [the effective date of this act].

- END -

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